*THE HON'BLE SRI JUSTICE P.S.NARAYANA

+W.P.No.16860 of 2006

% 30-10-2007

Gadu Appala Naidu .. Petitioner

And

$ The Commissioner of Endowments Department,
Government of A.P., Hyderabad
And another .. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri Mavidi Rama Rao

^ Counsel for respondents : Assistant Government Pleader for Endowments

?CASES REFERRED :

Nil

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.16860 of 2006

Date : 30-10-2007

Between:

Gadu Appala Naidu .. Petitioner

And

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Government of A.P., Hyderabad
And another .. Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.16860 of 2006

ORDER:

1. This Court issued *rule nisi* on 12-4-2007 and in W.P.M.P.No.21121/2006 the following order had been made :

> "In this application, an interim direction is sought to respondents not to conduct public auction for leasing out the rights on usufruct of cashew tope situated in S.No.184 of Chippada village. The second respondent filed counter stating that auction was already conducted on 25-8-2004. Therefore, this Court is not inclined to pass any order. If ultimately, petitioners succeed, appropriate orders can be passed for refund of the money deposited by him.

The WPMP is accordingly dismissed.

Post the Writ Petition for Final hearing in the last week of June, 2007".

2. The writ petitioner, Appala Naidu, filed the present Writ Petition for a Writ of Mandamus or any other appropriate writ declaring the order passed by 2nd respondent in R.C.No.422/04 dt.30-6-2006 cancelling the lease granted in favour of petitioner by 1st respondent in D.Dis.No.L1/51641/04 dt.30-10-2004, for the leasehold rights of usufruct of cashew tope situated in S.No.184 in Chippada Village, Bheemunipatnam Mandal, Visakhapatnam District, to an extent of Acs.58.60 cents for the period from 8-9-2004 to 7-9-2007 as illegal, arbitrary and in utter violation of the principles of natural justice and also the terms and conditions of auction and to set aside the same and further to direct the respondents to handover the physical possession of the cashew tope to the petitioner or alternatively to refund the security deposit to him and to pass such other suitable orders.

3. A counter affidavit was filed by the 2nd respondent and reply affidavit also had been filed.

4. Sri Rama Rao Mavidi, the learned Counsel representing the petitioner had pointed out to the relevant dates and also pointed out to the absurd stand taken by the 2nd respondent and would maintain that in the light of the facts and circumstances, it cannot be believed that even before the execution of the lease deed and the licence deed, possession had been delivered. The learned Counsel also would maintain that for reasons best known, having avoided the execution of the lease deed or the licence deed, as the case may be, now the 2nd respondent is putting forth a defence that possession had been delivered and this cannot be a sustainable ground. Even otherwise, the learned Counsel would maintain that the competent authority to cancel the lease is only the Commissioner of Endowments in this case since the said Commissioner of Endowments alone had approved this lease as per the Rules governing the field. The Counsel also would maintain that it may be that auction could have been conducted, but however when this Court is satisfied that the cancellation order is illegal and without jurisdiction, the same is liable to be quashed and the petitioner be permitted to continue in possession of this property for the period covered by the said lease reckoning the period as may be fixed by this Court or

in the alternative the refund of the amount to be ordered. The Counsel also would maintain that it cannot be said that the Writ Petition cannot be maintained since this is a matter concerned with contract in the light of the fact that the very cancellation was made by an authority who is not competent to make such an order. The Counsel also had taken this Court through the series of events and also the contents of the affidavit filed in support of the Writ Petition, counter and also the reply affidavit as well.

5. The learned Assistant Government Pleader for Endowments had taken this Court through Rules 3, 4, 5, 6, 7, 8, 12, 14, 15 and 17of A.P. Charitable and Hindu Religious Institutions and Endowments Immovable properties and other rights (other than Agricultural Lands) Leases and Licenses Rules, 2003, in short hereinafter referred to as "Rules" for the purpose of convenience.

6. In the said Rules, the words *"... other than Agricultural lands"* would assume some importance. It appears, the subject matter of controversy appears to be the leasehold rights of usufruct of cashew tope which may fall under horticulture. Be that as it may, the writ petitioner had stated that Mansas Vizianagaram is the owner of cashew tope situated in S.No.184 of Chippada village, Bheemunipatnam Mandal to an extent of Acs.58.60 cents. The said Society conducted public auction for the leasehold rights of usufruct of cashew tope for a period of three years i.e., from 8-9-2004 to 7-9-2007. The petitioner became the highest bidder in the public auction which was conducted on 25-8-2004 for the leasehold rights of usufruct of Cashew tope for the period 8-9-2004 to 7-9-2007. Accordingly, the petitioner deposited a sum of Rs.3,60,000/- towards security deposit as per the conditions of the auction. The 1st respondent-Commissioner of Endowments, Hyderabad was pleased to approve the leasehold rights granted in favour of the petitioner in D.Dis.No.L1/51641/2004 dated 30-10-2004. The 2nd respondent in R.Cs.No.422/2004 C-II dated 27-11-2004 directed the petitioner to execute the lease deed within a period of ten days from the date of receipt of the notice. It is further stated that the 2nd respondent in the aforesaid order had stated that being the highest bidder the petitioner was given the leasehold rights of usufruct of cashew tope situated in S.Nos.94 and 95 in Chippada village to an extent of Acs.58.60 cents from 8-9-2004 to 7-9-2007 and the petitioner had deposited the entire lease amount of Rs.3,06,000/- towards security deposit and requested the 2nd respondent to execute the lease

deed in favour of the petitioner. But, the 2nd respondent for the reasons best known to him failed to execute the lease deed in favour of the petitioner and also failed to handover the physical possession of the land in terms of the auction conditions. Thereafter, being the highest bidder, the petitioner approached the authorities on several occasions and requested them to execute the lease deed and handover physical possession of the cashew tope, but the respondents failed to handover the physical possession of the cashew tope to the petitioner. It is also averred that the petitioner came to know through a news item published in Eenadu news paper dated 29-7-2006 that the 2nd respondent is conducting auction on 11-8-2006 for the leasehold rights of the usufructs of the cashew tope situate in S.No.184 of Chippada village in Bheemunipatnam Mandal to an extent of Acs.58.60 cents for a period of one year. The petitioner also came to know that the 2nd respondent by an order dated 30-6-2006 cancelled the lease granted in favour of the petitioner. The petitioner obtained a copy of the impugned order granted by the 2nd respondent on 30-6-2006 and was surprised to note that in spite of the notices issued on 8-2-2005 and 28-9-2005 by the 2nd respondent, the petitioner did not pay the lease amount and there is no response from the petitioner's side and accordingly the 2nd respondent cancelled the lease granted in favour of the petitioner for non-payment of the lease amount as per the auction conditions. It is also further stated that the question of cancellation of the lease granted in favour of the petitioner does not arise since the respondents failed to handover the cashew tope to the petitioner pursuant to the auction. It is also specifically stated that the petitioner did not receive any notices from the 2nd respondent as alleged and the respondents are put to strict proof of the same. The petitioner approached the respondents-authorities on several occasions and made several representations requesting them to handover the cashew tope to the petitioner to enable him to have the usufructs of the cashew tope. The action of the respondents-authorities canceling the lease granted in favour of the petitioner without handing over the cashew tope as per the auction conditions and without giving any notice or opportunity is illegal, arbitrary and the same is in utter violation of the principles of natural justice. It is also further stated that the 2nd respondent issued a notification which was published in Eenadu edition on 29-7-2006 wherein it is stated that the public auction will be conducted on 11-8-2006 in respect of the leasehold rights of the usufruct of the cashew tope

situated in S.No.184 of Chippada village, Bheemunipatnam to an extent of Acs.58.60 cents. The respondents-authorities failed to handover the physical possession of the cashew tope to the petitioner as per the terms and conditions. The respondents have no right whatsoever to conduct public auction in respect of the leasehold rights of the usufruct of the cashew tope situated in S.No.184 of Chippada village, Bheemunipatnam to an extent of Acs.58.60 cents without handing over the same to the petitioner. It is also further stated that the petitioner gave a representation on 5-8-2006 to the 2nd respondent requesting him not to proceed with the auction schedule to be conducted on 11-8-2006 and further requested him either to handover the physical possession of the cashew tope in S.No.184 of Chippada village to an extent of Acs.58.60 cents as per the conditions of the auction or return the security deposit to the petitioner, but the 2nd respondent had not taken any action on the representation of the petitioner and it is reliably learnt that the 2nd respondent is making efforts to proceed with the auction on 11-8-2006 as fixed.

7. In the counter filed by the 2nd respondent, the Executive Officer of the 2nd respondent, it is stated that the 2nd respondent-Institution had issued a public notification on 11-8-2004 to conduct public auction of the usufructs of the cashew tope situate in S.No.184 to an extent of Acs.58.60 cents for a period of three years from the date of handing over of the land. The auction was conducted on 25-8-2004 and as per the conditions of the auction, the petitioner had paid an amount of Rs.50,000/- as earnest money deposit along with other 15 other persons. The petitioner stood as the highest bidder for an amount of Rs.3,06,000/- in the auction. The Executive Officer had issued notice in Rc.No.422/2004/C.2 dated 23-9-2004 by way of registered post to the writ petitioner to pay the remaining balance of Rs.2,56,000/- towards security deposit within a period of ten days and after receipt of the notice the writ petitioner had turned up and paid the amount of Rs.2,56,000/- towards the security deposit. After paying the said amount, on 8-9-2004, the land was handed over to the petitioner and a report was sent to the Commissioner of Endowments that the tenant had entered into the land on 8-9-2004 and requesting for approval to the highest bid for a period of three years from 8-9-2004. The Commissioner of Endowments had accepted the highest bid. It is further stated that later the petitioner avoided to pay the rents though he got the yield from the trees. On 27-

11-2004, a notice in Rc.No.422/2004 dated 27-11-2004 was issued to the petitioner to get the lease agreement executed and pay the arrears of rent for the first year for fulfilling condition No.15 of the auction condition. However, the notice dated 27-11-2004 was returned by the postal authorities as not claimed. Another notice was issued to the petitioner in Rc.No.422/2004/C.2 dated 8-2-2005 for payment of rent as well as execution of rental deed and the said notice also as returned by the postal authorities as unclaimed. It is also further stated that when the petitioner is not paying the rentals and enjoying the usufructs, the Institution got issued a legal notice by way of telegram on 26-7-2005 vide Receipt No.185 of Vizianagaram post office. In spite of receiving the telegram notice, the writ petitioner had not paid the amount. On 28-9-2005, a notice in Rc.422/2004/C.2 was issued to the petitioner by way of Registered Post with Acknowledgement Due and the same was received by the petitioner as per the acknowledgement. Though the petitioner had received the said notice, he had not cleared the dues and had not honoured condition No.15. Hence, another legal notice as issued on 26-11-2005 to the petitioner and the same was returned unclaimed. The petitioner wantonly avoided to take the said notices. It is also further stated that as there was no response from the petitioner in spite of repeated notices, the 2nd respondent had issued the proceedings on 30-6-2006 cancelling the usufruct rights and even the said orders were sent to the petitioner by way of Registered Post and the same was returned unclaimed. A caveat was filed by the 2nd respondent before this Court and the caveat was received by the petitioner. The 2nd respondent has power under the lease conditions to cancel the lease of usufruct and there is no illegality in the orders issued dated 30-6-2006. It is further specifically stated that the contention that the land was not surrendered to the writ petitioner at any point of time is incorrect. In fact, the land was surrendered to the writ petitioner on 8-9-2004 itself as claimed by the petitioner himself. The period of three years from 8-9-2004 to 7-9-2004 as stated by the writ petitioner was not mentioned in the auction notice or auction conditions. In the auction conditions it was mentioned that the lease is for a period of three years from the date of handing over. Further, when the petitioner returned the registered posts, it is not known how the petitioner was able to secure the copies of orders. It is also further stated that after cancellation of the lease of the petitioner, the auction was conducted on 11-8-2006 in the presence of the Assistant Commissioner of Endowments, Vizianagaram at the office of the

Institution at 11.00 A.M. and in total seven bidders had participated in the tender-cum-public auction by depositing E.M.D. of Rs.25,000/- each. Among the seven bidders, four bidders had also submitted sealed tenders. An open auction was conducted and the highest bid of Rs.45,00,000/- was secured. After opening the sealed tenders it was found that an offer of Rs.6,03,000/- offered by Sri G.V.S.S.N. Raju s/o.late Sankara Varma of Thettangi village, Gurla Mandal, Vizianagaram District is the highest offer and he paid Rs.2,01,000/- as per the conditions immediately after the auction.

8. A reply affidavit was filed wherein it is stated that the contention of the 2nd respondent that after paying the security deposit amount on 8-9-2004 the land was handed over to the petitioner is incorrect and false. The notice dated 23-9-2004 was issued by Registered Post to the petitioner to pay the remaining amount of Rs.2,56,000/- towards the security deposit within a period of ten days and hence the question of handing over the land to the petitioner on 8-9-2004 that too prior to the issuance of the notice does not arise and the 2nd respondent is put to strict proof of the same. The contention of the 2nd respondent that the petitioner avoided to pay the rents though the petitioner got the yield from the trees is totally incorrect and false. As aforesaid, since the land was not handed over to the petitioner, the question of the petitioner getting yield from the trees does not arise. The petitioner is not aware of the alleged notices dated 27-11-2004 and 8-2-2005 sent by the respondents. The petitioner was very much available at his residence. Admittedly both the notices were returned unserved and hence the question of not claiming the letters does not arise. The petitioner had also not received the legal notice sent by way of telegram on 26-7-2005 and had not received the alleged notice dated 28-9-2005. The contention of the 2nd respondent that the petitioner had not paid the rents enjoying the usufructs is totally incorrect and baseless. The respondents in spite of the petitioner's repeated requests had failed to execute the lease agreement in favour of the petitioner and handed over possession of the cashew tope in spite of the fact that the petitioner paid the entire security deposit as directed by the respondents within the time. The 2nd respondent, without serving any notice whatsoever and without following the due procedure, by proceedings dated 30-6-2006 cancelled the lease granted in favour of the petitioner. Admittedly the said proceedings were not served on the petitioner and as per A.P. Charitable and Hindu Religious

Institutions and Endowments Act, 1987 (Act 30 of 1987) and the Rules framed thereunder, the 2nd respondent is not the competent authority either to approve the lease or cancel the leases. As per Rule 12(2) of the Rules, the Commissioner, Endowments alone is the competent authority if the value of the lease exceeds Rs.1,00,000/-. In the present case, admittedly the lease amount is Rs.3,06,000/- and hence the 2nd respondent has no power or competency to cancel the lease granted in favour of the petitioner. The further contention of the 2nd respondent that he got power under the lease conditions to cancel the lease of usufructs is incorrect and untenable. The contention of the 2nd respondent that the land was surrendered to the petitioner on 8-9-2004 itself is incorrect and baseless. Admittedly, the respondents had not executed any lease deed in favour of the petitioner after the petitioner deposited the security deposit. The question of surrendering the land without executing the lease deed does not arise. The contention of the respondents that the Writ Petition is not maintainable as the petitioner can seek enforcement of contract after canceling of the contract is incorrect and untenable. The present Writ Petition is filed challenging the illegal action of the 2nd respondent canceling the lease granted in favour of the petitioner without any power or competency. The action of the 2nd respondent is wholly illegal, arbitrary, without jurisdiction and in utter violation of the principles of natural justice and it is well settled that a petition may lie under Article 226 of the Constitution of India to set aside an order of Government or statutory authority which violates a Constitutional or statutory provision even though it may arise out of a contract.

9. The Counsel representing the respective parties had placed strong reliance on Rules 12 and 17 on the ground that these Rules are applicable may be since the subject matter is a cashew nut tope not attracted by the words "… other than Agricultural Lands". Be that as it may, Rule 12 of the Rules reads as hereunder :

(1) All lease or license shall be immediately after auction is conducted be reported to the competent authority, who may either confirm, or for reasons to be recorded in writing, reject the lease or license.

(2) The authorities competent to confirm or reject the lease or license and the annual rentals thereon shall be as specified in the table below:-

Sl.No.	Classification of the institution or Endowments	Assistant Commissioner	Deputy Commissioner	Regional Joint Commissioner	Additional Commissioner	Commissioner
01	02	03	04	05	06	07
(1)	Institutions and Endowments published under Section 6(c) of the Act and mutts whose annual income is below Rs.50,000/-	Lease Value not exceeding Rs.15,000/- per annum	If the Value is between Rs.15,000/- to Rs.30,000/-	If the Value is between Rs.30,000/- to Rs.50,000/-	If the Value is between Rs.50,000/- to Rs.1,00,000/-	If the value exceeds Rs.1,00,000/-
(2)	Institutions and Endowments published under Section 6(b) of the Act and mutts whose annual income is above Rs.50,000/- but below Rs.1,00,000/-	...	Not exceeding Rs.30,000/-	If the value is between Rs.30,000/- to Rs.50,000/-	If the value is between Rs.50,000/- to Rs.1,00,000/-	If the value exceeds Rs.1,00,000/-
(3)	Institutions and Endowments Published Under Section 6(a) of the Act other than the institutions managed by the Executive Officers in the rank of Deputy Commissioner and Regional Joint Commissioners and Mutts whose annual income is above Rs.1,00,000/- but below Rs.5,00,000/-	…	…	Not exceeding Rs.50,000/-	If the value is between Rs.50,000/- to Rs.1,00,000/-	If the value exceeds Rs.1,00,000/-

(4)	Institutions and Endowments published under Section 6(a) of the Act which are managed by Executive Officer in the rank of Dy.Commissioner and Regional Joint Commissioners and fall under the purview of the provision contained in Section 6(d) and 6(e) of the Act	…	…	…	Not exceeding Rs.1,00,000/-	If the value exceeds Rs.1,00,000/-

Provided that the Commissioner shall only the Competent Authority for approval of the leases or licenses otherwise than by way of public auction in all cases irrespective of the category of the institution and the value of the lease.

(3) No lease or license shall be valid unless and until it is approved by the Competent Authority.

10. Rule 14 of the Rules reads as hereunder :

(1) All lease deeds or deeds of licences shall be obtained in writing and shall be registered wherever so required by law. Where the lease deed or deed of licence is registered, the registration charges shall be borne by the lessee or licencee.

(2) No person shall be allowed to enforce his rights under the lease or licence until he has executed the lease deed.

11. Rule 17 of the Rules reads as hereunder:

"In default of payment of rent for lease or licence, the lease or licence is liable for termination and the lessee or licencee is liable for eviction and the security deposit is also liable to be forfeited."

12. On the strength of these Rules, submissions at length were made by the Counsel representing the respective parties relating to the competency of the 2nd respondent to make an order of cancellation. Further, submissions had been made relating to the factual controversy whether possession in fact had been delivered to the writ petitioner or not. The main contention of the Counsel for the writ petitioner is that unless and until a registered lease deed or licence deed had been executed, the question of the 2nd respondent delivering possession and the petitioner taking the possession would not arise. Even otherwise, inasmuch as the approval to be made only by the Commissioner of Endowments, the

Executive Officer is not competent to make an order of cancellation. Several improbabilities in relation to these factual issues had been argued in elaboration.

13. This is a matter concerned with contract and cancellation thereof. Whether in fact possession had been delivered or not, is predominantly a question of fact. In the light of the rival stands taken by the parties even to make an order of refund, this question may have to be decided and such factual controversies cannot be adjudicated upon effectively by a writ Court. As far as the validity or otherwise of the cancellation order is concerned, the affected party, the subsequent successful bidder had not been impleaded as a party and in his absence, an order which may be prejudicial to the interest of such party cannot be made. Hence, in the light of these factual controversies, liberty is given to the writ petitioner to approach the appropriate Civil Court praying for appropriate reliefs if the petitioner is so advised.

14. With the above observation, the Writ Petition is disposed of. No Costs.

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Justice P.S.Narayana

Date : -10-2007

L.R. copy to be marked : YES / NO

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